

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIC X. RAMBERT	:	CIVIL ACTION
a/k/a "KHALIL WALI MUHAMMAD"	:	
Petitioner,	:	
	:	
v.	:	
	:	
BEN VARNER, et al	:	
Respondents.	:	No. 01-2178

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY , 2002

Presently before the Court are the Report and Recommendation ("Report") by Chief United States Magistrate Judge James R. Melinson, and a Motion for Reconsideration to the Report and Recommendation filed by Petitioner Eric X. Rambert. Rambert's Motion will be treated as his Objections to the Report ("Objections"). In his Report, Chief Magistrate Judge Melinson recommended that Rambert's pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 be denied with prejudice. For the reasons that follow, Petitioner's Objections are denied and the Report is approved and adopted.

BACKGROUND

The Court approves and adopts the background facts as stated in Chief Magistrate Judge Melinson's Report. A summary of the background facts is provided. On November 21, 1983, Rambert entered a negotiated guilty plea to rape, involuntary deviate sexual intercourse, burglary, robbery, and conspiracy. Rambert was sentenced to a term of ten to twenty-five years imprisonment.

On July 17, 1984, Rambert filed his first petition for collateral review under Pennsylvania's Post Conviction Hearing Act ("PCHA"), 42 Pa. Cons. Stat. Ann §§ 9541-9551 (West 1998) (superseded by the Post Conviction Relief Act in 1988, which amended §§ 9541-9546 and repealed §§ 9547-9551). The PCHA court denied relief, and the Superior Court of Pennsylvania affirmed the decision on June 30, 1986. Rambert did not appeal to the Supreme Court of Pennsylvania.

On July 28, 1999, Rambert filed a second petition for collateral relief, this time under Pennsylvania's Post Conviction Relief Act ("PCRA"), 42 Pa. Cons. Stat. Ann. §§ 9541-9546 (West 1998). That petition was dismissed by the PCRA court as untimely. The Superior Court later affirmed the PCRA court on September 18, 2000.

Rambert filed the current writ of habeas corpus on May 3, 2001. Rambert claims that: 1) his guilty plea was unlawful; 2) his conviction was obtained in violation of his privilege against self-incrimination; 3) the prosecution's failure to disclose evidence favorable to Rambert was misconduct; and 4) his trial counsel was ineffective. The Commonwealth responded that the petition is untimely and must be dismissed.

DISCUSSION

Under 28 U.S.C. § 636(b)(1) (1994), this Court is to make a de novo determination of those portions of the report or

specified proposed findings or recommendations to which objection is made. See also Fed. R. Civ. P. 72(b). The Court, recognizing that Petitioner is proceeding pro se, has thoroughly reviewed the statements made by Petitioner in his Objections. Petitioner claims that: 1) he would have timely filed his federal habeas petition had he known of the limitations period; and 2) he was unable to comply with the limitations period because his legal materials were allegedly confiscated by prison officials on October 7, 1997, and never returned.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), signed into law on April 24, 1996, significantly altered the rules governing habeas corpus petitions. Petitioners must satisfy the one-year time limitation under AEDPA, 28 U.S.C. § 2244(d)(1), which provides as follows:

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court. The limitation period shall run from the latest of-

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral appeal; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

Section 2244 further provides that "[t]he time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection." 28 U.S.C. § 2244(d)(2).

The Third Circuit Court of Appeals has interpreted the AEDPA to allow for a one-year grace period following its effective date of April 24, 1996. See Burns v. Morton, 134 F.3d 109, 111 (3d Cir. 1998). Thus, a petitioner whose conviction became final before the effective date of the AEDPA had until April 23, 1997 to file a timely federal habeas petition. Id.

Here, direct review of Rambert's claims became final on December 21, 1983, as discussed in the Report. Because Rambert's judgment of sentence was final prior to the enactment of the AEDPA, the one-year grace period is applicable, and Rambert had until April 23, 1997 to file his federal habeas petition. However, Rambert did not seek habeas relief until May 3, 2001, more than four years after the grace period had expired. Thus, Rambert's petition is untimely and must be dismissed unless he is entitled to a tolling of the statute of limitations through 2001.

Rambert, however, cannot satisfy the requirements of the tolling provision. Rambert's first petition for collateral

review concluded in 1986, well before the enactment of the limitations period. His second petition was not filed until July 28, 1999, well after the expiration of the grace period. Thus, his state petitions can not act to toll the statute of limitations.

Further, Rambert does not satisfy any of the exceptions to the period of limitations set forth in § 2244(d)(1)(B)-(D). In his Objections, Rambert alleges that prison officials confiscated his legal materials, thus interfering with his ability to timely file his petition. Even if true, Rambert would not satisfy any exception. The alleged confiscation took place on October 7, 1997, over five months after the statute of limitations had already expired.

Finally, Rambert does not present any extraordinary circumstances that would allow the statute of limitations period to be equitably tolled. A petitioner must show that he exercised reasonable diligence in bringing his claims; mere excusable neglect is not sufficient. Miller v. New Jersey Dept. of Corrections, 145 F.3d 616, 617-18 (3d Cir. 1998). Rambert claims that he was not aware of the limitations period, and would have otherwise timely filed his habeas petition. However, Rambert has presented no evidence that he exercised reasonable diligence in bringing his claims.

Accordingly, Rambert's habeas petition must be denied

because it is untimely and fails to meet any exception to the statute of limitations under the AEDPA.

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O R D E R

AND NOW, this day of July, 2002, upon consideration of the Petition for Writ of Habeas Corpus filed by the Petitioner, Eric X. Rambert (Doc. No. 1), the Report and Recommendation of Chief United States Magistrate Judge James Melinson (Doc. No. 27), and the Petitioner's Objections (Doc. No. 28) thereto, it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**.
Petitioner's Objections are **DENIED**.
2. The Petition for a writ of habeas corpus is **DENIED** with prejudice.
3. There is no probable cause to issue a Certificate of Appealability.
4. The Clerk of the Court shall **MARK** this case as **CLOSED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.